

UTAH AIR QUALITY BOARD MEETING
September 5, 2007

FINAL MINUTES

I. Call to Order

Ernest Wessman called the meeting to order at 1:35 p.m.

Board members present:

Ernie Wessman	Jim Horrocks	Wayne Samuelson
Darrell Smith	Kathy Van Dame	Nan Bunker
Steve Sands	Craig Petersen	Stead Burwell (on conference call)

Excused: Rick Sprott

Executive Secretary: Cheryl Heying

II. Date of the Next Air Quality Board Meetings

October 3, 2007 and November 7, 2007.

III. Approval of the Minutes for July 23, 2007 Teleconference Call and August 1, 2007 Board Meetings.

- Nan Bunker made the motion to approve the July 23, 2007, teleconference meeting minutes. Darrell Smith seconded. The Board approved unanimously.

Mr. Wessman made corrections to the last paragraph on page four of the August 1, 2007, minutes. The word “courts” should be changed to “course” in two sentences of that paragraph.

- Nan Bunker moved to approve the minutes as corrected from the August 1, 2007, Board meeting. Kathy Van Dame seconded. The Board approved unanimously.

Mr. Wessman stated that the Board has a quorum for Items IV, V, and VI on today’s agenda and he has recused himself on these issues; Mr. Horrocks would preside over these items. Mr. Horrocks explained that a number of Board members, due to varying conflicts, have recused themselves from these specific items. The recused Board members are Ernie Wessman, Steve Sands, and Kathy Van Dame.

IV. Save Our Air and Resources Petition to Intervene and Scheduling and Procedures for SPC Hearing. Presented by Fred Nelson.

Fred Nelson, of the Attorney General’s Office and counsel to the Board, explained that the first part of this item is a petition to intervene by Save Our Air and Resources (SOAR). In June of this year the Executive Secretary issued a letter to the Sevier Power Company (SPC) concerning the permit that was issued to SPC to construct a coal-fired power plant in the Richfield area. The SOAR petition challenges that particular letter and SOAR has asked to intervene. The parties to the proceeding at this point are the power company and the Executive Secretary. Under the rules, in order to be a part of the proceeding SOAR must be granted intervention. None of the parties, the Executive Secretary or the power

company, have objected to SOAR's petition to intervene. Granting the petition to intervene does not determine the merits of the petition, it simply establishes the group as a party to the proceeding. It is Mr. Nelson's recommendation that the Board grant SOAR's petition to intervene and consider that as a motion.

Mr. Petersen asked Mr. Nelson if it does more than provide SOAR the opportunity to present testimony. To which Mr. Nelson answered that it establishes them as a party to this proceeding and that he will discuss how that coordinates with the Sierra Club matter at the second part of this item. Initially the Board just needs to make the determination as to whether to grant intervention.

- Craig Petersen moved that the Board grant Save Our Air and Resources their right to intervene. Wayne Samuelson seconded. The Board approved unanimously.

Mr. Nelson explained that the second part of this item is that SOAR has submitted a pleading to the Board suggesting to include the process of hearing their issue, with suggested timeframes, at the same time the Board hears a similar issue presented by the Sierra Club scheduled to take place October 1st and 3rd. It is Mr. Nelson's suggestion that the Board approve holding the Sierra Club and SOAR hearings as a combined hearing. Mr. Nelson could then put together a time schedule with the time allocation for each of the parties to include the Executive Secretary, SPC, SOAR, and Sierra Club. The parties could then react to Mr. Nelson as to what their feelings are on this schedule. If a schedule cannot be worked out, then the determination will need to be made on October 1st. Mr. Nelson is hopeful that based on SOAR's submission and the amount of time that has been allocated, that the parties should be able to come up with a reasonable allocation of time that would be fair for all parties. It is Mr. Nelson's suggestion that the Board requests that he put together a time schedule, with time allocations, and approves combining the Sierra Club and SOAR hearings.

Brian Burnett, of Sevier Power Company, stated that SOAR has asked for the hearing to be broken up as a separate hearing on the same date and they don't want their time to be counted against another parties time, which is unacceptable to SPC. Mr. Burnett would like to have the schedule made today.

Mr. Nelson then stated that another option would be, since Mr. Horrocks is the presiding officer and this would be a procedural determination, that he submit a schedule proposal and submit it to Mr. Horrocks. Mr. Horrocks could then receive comments within the next week from the parties and then make a decision.

David Becker, of the Sierra Club, stated his approval of either proposal made by Mr. Nelson. Further, SOAR submitted their suggestion on August 13th and there has been no response from SPC or the Executive Secretary until right now. He feels that it is not appropriate to make a determination until all of the parties have had a chance to talk.

Mr. Horrocks then asked if the Sierra Club was willing to share their time with SOAR. To which Mr. Becker stated, no. He further commented that SOAR has made the suggestion of adding an hour on the first day of the hearings and that could potentially expand the time to 6.5 hours per side. With something like that, Sierra Club may be willing to share their time with SOAR. Mr. Becker feels that Mr. Nelson is the person to start this process and that it shouldn't be brought to the Board for the first time right now. Mr. Nelson can also give guidance to the parties since there seems to be some confusion and discrepancy about how much briefing should be allowed for the proceedings.

Mr. Nelson stated that he understands Mr. Burnett's concern that a schedule is needed soon. It is Mr. Nelson's plan that this hearing can be handled within the constraints of two days that the Board has allocated. This is a specific process of handling this request and hopefully an agreement can be reached.

If not, Mr. Nelson could return to the Board within the next week for the Board's determination. If the Board does not feel comfortable with this, then it could be held over until the start of the hearing. If a schedule were agreed to prior to the hearing, then the Board would know where the dispute is and know the amount of time given as far as allocation of hearing time.

Mr. Horrocks stated that Mr. Nelson has offered two options for the Board's consideration. He is sensitive to the fact that all of the parties involved need to know what the time allocation is going to be and encourages that a decision is reached as soon as possible.

Mr. Nelson stated the he will get something to all parties and to Mr. Horrocks by early Friday. Then a decision can be made as to whether a special teleconference Board meeting needs to be made or whether Mr. Horrocks is comfortable with making a decision. Mr. Nelson asked Mr. Horrocks if this sounds like a reasonable approach to which he agreed.

- Darrell Smith made the motion, as stated by Mr. Nelson, to approve the consideration of the SOAR petition at the same as the Board hears the Sierra Club petition. Wayne Samuelson seconded. The Board approved unanimously.

V. Motions for Permission to Appear as Amicus Curiae. Sevier Power and IPSC Hearings. Presented by Fred Nelson.

Mr. Nelson stated there are two motions for permission to appear amicus curiae in both the SPC proceeding and the Intermountain Power Plant Service Corporation (IPSC) proceeding. He then explained that to appear before the Board in an adjudicative matter you either have to be a party or you have to be granted amicus status. A party has full rights in the proceeding to present testimony, to present documentary evidence, to cross-examine, and to make oral arguments. An amicus is considered to be a friend of the court or the adjudicative body and presents a brief in written form that indicates positions on different issues that the Board is considering. There are several ways to present matters to the Board: a petition for rulemaking, asking the Board to change a rule; a petition to take a policy position; and in an adjudicative proceeding there is an opportunity to file an amicus brief. Amicus position is completely discretionary with the Board as to whether or not it is granted. Amicus status is therefore granted when the Board considers that there is benefit to be gained in the process from hearing from amicus participants.

The two motions received by the Board are from two different groups, the Utah Physicians for Health Environment (UPHE) and the National Parks Conservation Association (NPCA). They request to submit a prehearing brief of up to 15 pages. The way that the SPC hearing is scheduled now, the Board will receive 10 days before the hearing a prehearing brief from each of the parties. A prehearing brief is for the purpose of summarizing the positions of the parties and informing the Board as to the evidence, information, witnesses, and arguments that the party will be presenting formally to the Board in detail.

Mr. Nelson continued by stating that it is important to remember that an adjudicative proceeding is for the purpose of hearing the issues raised by the petitioner. Sierra Club and SOAR have specific issues that have been raised and are defined in each of their request for agency action. The purpose for the adjudicative hearing is not rulemaking or to take public policy positions and establish them. It is for purposes of adjudicating those issues. So he would caution the Board that in granting the amicus request, as a matter of fairness to the parties to the proceeding, that amicus briefs specifically address the issues that are raised as part of the adjudicative proceeding. To do otherwise, makes it unfair for the participants in the sense that you cannot cross-examine, rebut, or review information that has been presented by an amicus. Mr. Nelson also requested that all of the parties specifically address and focus on the issues that have been raised in these proceedings.

It is Mr. Nelson's recommendation that the Board grant the amicus petitions by allowing them to file a prehearing brief and that the Board request that the information address specifically the issues that have been raised by the parties in the proceeding. Mr. Nelson went on to state that the Board is an administrative body and for that reason the Board can accept and consider information and use that information without it being strictly in conformance with the processes of a court of law. However, the Board's decisions must be based on the evidence that is presented in the adjudicative process. If an amicus brief is submitted and there are concerns about what is contained in the brief, this Board can hear objections to that and duly consider those objections.

The Executive Secretary filed a pleading in this matter contesting the breadth of the motion by the Utah Physicians for Healthy Environment. The Executive Secretary would not object the motion granting an amicus brief, if it were for the purpose of addressing the issues that are being presented by Sierra Club and SOAR. However, the Executive Secretary would object to the presenting of information that involved issues which may be related but were more in the nature of rulemaking or policy of the Board. Therefore, it's up to the Board as to decide what they want to do. Sierra Club filed a pleading supporting the granting of these two motions allowing for prehearing briefs. To Mr. Nelson's knowledge, SPC did not file a response.

Mr. Horrocks asked Mr. Nelson, if the Board grants to these two organizations the ability to submit an amicus brief and the Board puts stipulations on the briefs in regards to length and what the briefs need to address and the Board gets something back that is contrary to the constraints set, how does the Board handle that. Mr. Nelson answered that if there are objections to what is being presented to the Board, a motion can be made to strike the brief. Another option is that the Board evaluates the brief and appropriately considers and presents it.

Mr. Horrocks recommended to the Board that this be split into two motions. First whether to grant amicus standing to the physicians and the national parks and second what limitations or restrictions the Board would impose on that brief.

Brian Burnett, Sevier Power Company, commented on the importance to look at the Board's regulation which allows that a person may be permitted by the presiding officer to enter an appearance as amicus subject to conditions. The physicians say they want to enter as amicus to show that existing ambient air standards used in EPA and by the Air Quality Board are inadequate to predict human health and welfare. This is not one of the eight issues listed by the Sierra Club and it's not an issue that's appropriate or proper for this proceeding. According to his estimate, there will be over 1,000 pages on relevant issues alone and he sees no reason in having two groups talk about things inappropriate and not relevant to the proceeding. Mr. Burnett further stated that this has gone on for a long time, discovery is done, depositions have been taken, etc. He feels that this is very prejudicial to his client without an opportunity to respond.

Dave Nimkin, Southwest Region Director for the National Parks Conservation Association, commented that his organization is almost 90 years old and are the preeminent voice for national parks throughout the United States. He stated that NPCA's interest is to address the requirements in permitting power plants and that they comply with the Clean Air Act and the effects of what that might be on national parks, specifically Capitol Reef and Zion National Park.

Brian Moench, of Utah Physicians for Healthy Environment, gave a description of the organization and stated that their position is the evaluation of health impacts of air pollution which he feels is relevant to these proceedings. Issues that have been itemized by Sierra Club and SOAR relate to public health. He feels the additional information that the physicians can provide to these proceedings in the way of public

health are vital. Therefore, the length of time it takes to make an appropriate decision should be considered in view of the consequences.

Mr. Horrocks asked Dr. Moench if he had an opportunity to review the Executive Secretary's response. Dr. Moench stated they had and would probably agree with the Executive Secretary's response with the exception to item number two which reads, "No evidence outside the administrative record may be presented or referenced, either as attachments to the brief or otherwise." In addition, the physicians may have possible objections to item number four which reads, "In light of time constraints, no oral argument will be permitted. In the alternative, if the Board permits oral argument, Sierra Club must share its time with UPHE and NPCA." The physicians would like to be in a position where they could answer questions from the Board regarding the brief.

Mr. Horrocks interprets the biggest concern is that the parties do not cross the line between the specific topics that need to be addressed at the hearing versus the rulemaking process. He further commented that there have been rulemaking discussions with the physicians prior about working together on rulemaking, but this is not the place for that rulemaking process. Dr. Moench concurred and stated it is not their intent to use the hearing as a platform for changing rules, but intend to provide public health information that is relevant to the proceeding.

Joel Ban, of Ban Law Office and counsel to UPHE, commented that it's also true that an amicus party will be allowed to participate in such proceedings where they offer unique expertise, which is something he feels the UPHE will provide in this case. In addition, UPHE does not wish to present evidence to issues that are not already in front of the Board, and certainly how these permits affect public health is an issue. It is Mr. Ban's request that the physicians be allowed to present a 15-page brief that would outline some of the critical issues.

Chris Cowley, of UPHE, expressed concern of residents living in the Sevier valley and the health implications of constructing a power plant in the valley. Residents understand more the rulemaking process and administrative decisions that have gone on in the past. The physicians feel that by being allowed to file a brief, this will give the Board an understanding of the health impact that these residents will be facing for years, if this plant is constructed.

Gerald Ross, of UPHE, stated the physicians want to be a resource to the Board. They believe that they can bring a valuable resource to the Board in consideration of the decisions that the Board has to make. It is their philosophy that they have an expertise that is unique and the ability to summarize some of the latest scientific and medical information available within the last three to five years. It changes the perspective on things and it may be helpful to the Board to be aware of what is happening in the scientific and medical community.

Marti Banks, of PacifiCorp, emphasized that the parameters of any amicus opportunity would be limited to precise issues that have been articulated in the request for agency action. Therefore, he asks for a specific condition limiting participation to the SPC hearing and not part of the Integrated Gasification Combined Cycle (IGCC) hearing. The IGCC hearing is limited to whether the applicable Best Available Control Technology (BACT) rule should be interpreted to require the inclusion of IGCC in the BACT analysis. Furthermore, this is not part of the issue raised by the physicians or national parks about whether the existing ambient air standards currently used by EPA and Air Quality Board are inadequate to protect human health.

It is Mr. Nelson's understanding that the two requests have been to file a 15-page brief before the October 1st hearing and he does not read in the petitions a request to file an additional 15-page brief for

the IGCC hearing. The only issue before the Board is a motion to file a 15-page brief before the October 1st hearing.

In discussion among Board members, Mr. Petersen stated that it seems difficult to separate this item into two motions, of granting amicus standing and then any potential limitations. He recommends that the Board consider it as a single issue. Mr. Smith stated his concern with the Executive Secretary's item number two in that it might be too restrictive to the parties in what they want to accomplish. Mr. Smith believes that they have unique evidence to present and item number two seems to prevent them from doing that.

- Mr. Petersen made the motion to grant amicus status for both groups under the condition that they comply with the Executive Secretary's items numbers one, three, four, and five. Wayne Samuelson seconded. The Board approved unanimously.

VI. Stipulated Motion to Continue Proceedings in the IPSC Matter. Presented by Fred Nelson.

Mr. Nelson stated that this is a motion to continue the proceedings in the Intermountain Power Service Corporation (IPSC) matter. The Board has a motion filed by the Executive Secretary and Sierra Club agreeing to the motion to continue the proceeding. The Board also has a pleading filed by the Intermountain Power Plant (IPP) Unit 3 Development Committee. As the Board will recall, counsel for the IPSC permit holder withdrew from the proceeding and there is a question as to the status of the permit and how that is going to go forward. Until these issues are resolved, the Sierra Club and the Executive Secretary have asked the Board to continue those proceedings once those issues are resolved and a new schedule would be established. It is Mr. Nelson's recommendation that the Board make a motion to continue the proceeding with the understanding that any party to the proceeding, or other interested group, could pursuant to the rules of the Board file appropriate papers to reopen the proceeding.

Ms. Van Dame asked if the Sierra Club's attachment to their response, to Utah Associated Municipal Power Systems (UAMPS) and PacifiCorps claim for damages, was proof to support the fact that there is a controversy. To which Mr. Becker stated, yes.

Discussion was then made about the new dates for the upcoming hearings. Mr. Nelson stated that the SPC hearing scheduled for October 1st and 3rd; and the IGCC hearing scheduled for November 12th would continue. The IPSC hearing scheduled November 26th, 28th, and December 5th would be off until the Board sets a new schedule, if the Board's motion was approved. The December Board meeting is still tentatively scheduled for the 5th.

- Craig Petersen made the motion to continue the proceeding with the understanding that any party to the proceeding, or other interest group, could pursuant to the rules of the Board file appropriate papers to reopen the proceeding, as recommending by Mr. Nelson. Nan Bunker seconded. The Board approved unanimously.

Mr. Horrocks then turned the Chair back over to Mr. Wessman.

VII. Propose for Public Comment: Amend R307-214. National Emission Standards for Hazardous Air Pollutants. Presented by Eileen Brennan.

Eileen Brennan, Maximum Achievable Control Technology (MACT) Coordinator at DAQ, stated that this is for the annual update of R307-214-2 to incorporate changes to the existing MACT of the rules and to incorporate by referencing in new MACT's that have come out since the time DAQ did an

update. This year DAQ is adopting 10 new area source rules by reference. Those rules that DAQ is proposing to adopt are listed in the memo to the Board. The rules are fairly large as individual vehicles, but they are available electronically.

This year DAQ is also updating paragraph one, R307-214-1, to reflect the July 1, 2007, version of the Code of Federal Regulations (CFR) that also incorporates those rules.

Staff recommends that the changes to R307-214 be proposed for public comment.

- Darrell Smith made the motion to propose for public comment, amend R307-214, National Emission Standards for Hazardous Air Pollutants. Steve Sands seconded. The Board approved unanimously.

VIII. Propose for Public Comment: R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD). Presented by Colleen Delaney.

Colleen Delaney, Environmental Scientist at DAQ, explained that R307-405 incorporates by reference the 2006 version of the Federal Prevention of Significant Deterioration (PSD) permitting regulation. There have been no substantive changes to the federal regulation since 2006.

Staff recommends that R307-405 be propose for public comment to update the incorporation by reference to the July 1, 2007, version of the CFR.

- Kathy Van Dame made the motion to propose for public comment, R307-405, Permits Major Sources in Attainment or Unclassified Areas (PSD). Nan Bunker seconded. The Board approved unanimously.

IX. Informational Items.

A. Public Hearings and Submission of State Implementation Plans (SIPs). Presented by Mat Carlile.

Mat Carlile, Rules Coordinator at DAQ, explained that EPA recently completed revisions to the federal regulations that apply to the adoption of any SIP revision or revision to a rule that is part of a SIP. Prior to these changes, DAQ was required by EPA to hold a public hearing for any SIP revision or revision to any rule that is required by a SIP. This resulted in DAQ holding many hearings to which nobody came. As a result of this revision the federal rulemaking procedures are much more in line with the state rulemaking and hearing requirements. From now on DAQ will only hold a public hearing for SIP and rule revisions as needed. DAQ will always schedule a hearing for revisions that are critical and controversial and DAQ will always give the public 30 days to request a hearing. For the majority of DAQ rulemaking activities, we believe that we will not be asked to schedule a hearing. In the memo sent to the Board, we had identified three scenarios that we will follow for scheduling public hearings for rulemaking activities.

There was discussion among Board members about one area the public can have an air quality impact is on SIP revisions and the possibility of the DAQ constructing an email list of individuals interested in SIP revisions. Some concerns about such a list would be if an individual was somehow dropped from the list would blame be placed on the DAQ or possibly the Board. In addition, some individuals may see that as an intrusion as indicated from previous email lists from the DAQ.

- B. Compliance. Presented by Jay Morris and Harold Burge.**
- C. Air Toxics. Presented by Robert Ford.**
- D. Monitoring. Presented by Bob Dalley.**

Mr. Dalley updated the Board on the latest air monitoring data.

Mr. Smith commented that with the number of fires around the state this year does Utah receive reports or information on the impact of fires in surrounding states or how much Utah fires have affected them. To which Mr. Dalley responded that staff is putting together a package of the impacts of fires from surrounding states.

Ms. Van Dame asked about the revegetation of areas destroyed by fires in the Milford area and if DAQ is involved. Ms. Heying answered, yes. In addition, she has met with the Utah Department of Agriculture, the agency heading the effort to revegetate the area, and commented on their interest and coordination with state agencies. DAQ has been coordinating with other agencies in the state to make sure that land is properly managed so that this not experienced each year.

Mr. Sands asked if the July 7th data at North Salt Lake is one of the days under review. Ms. Heying answered that it is. The filter has been sent off for analysis and at this point DAQ is questioning some of the data. DAQ will be going through all of the information and try to figure out exactly why the high value.

Mr. Wessman recognized an individual, Bill Bowen, who had requested to make a public comment to the Board.

Bill Bowen, a citizen, requested to make a PowerPoint presentation to the Board. Mr. Bowen agreed to carry his presentation over to a later Board meeting when copies of his presentation would be available to the Board. It was then decided that Ms. Heying would work with Mr. Bowen to establish an informational item at a future Board meeting.

Meeting was adjourned at 3:07 p.m.